

AMENDED IN SENATE SEPTEMBER 7, 2007

AMENDED IN SENATE AUGUST 1, 2007

AMENDED IN SENATE JULY 17, 2007

AMENDED IN SENATE JUNE 27, 2007

AMENDED IN SENATE JUNE 4, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1526

Introduced by Assembly Member Lieber
(Coauthors: ~~Senators Alquist and Romero~~)

February 23, 2007

~~An act to amend Sections 1505, 1568.03, 1569.145, and 1788 of, and to add Section 1788.1 to, the Health and Safety Code, relating to community care. An act to amend Section 1091 of the Government Code, relating to conflicts of interest, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1526, as amended, Lieber. ~~Housing for elderly or disabled persons.~~~~Conflicts of interest.~~

(1) Existing law prohibits certain public officials and employees from being financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. An officer is not deemed to be interested in a contract entered into by a body or board of which the officer is a member if the member has only a remote interest in the contract and other requirements are met. A remote interest

is defined to include that of an employee or agent of a contracting party if certain conditions are met.

This bill would, in addition, include within the definition of a remote interest, that of an employee or agent of a contracting party where the contract is between a local government body or board and the contracting party as a franchise agreement and certain additional conditions are met.

(2) This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law establishes the State Department of Social Services and sets forth its powers and duties, including, but not limited to, administration over the California Community Care Facilities Act, which, with certain exceptions, requires community care facilities, as defined, to meet prescribed licensing standards.~~

~~Existing law exempts certain facilities for elderly or disabled persons that are approved and operated pursuant to prescribed provisions of federal law from licensing requirements applicable to community care facilities, residential care facilities for persons with life-threatening illness, and residential care facilities for the elderly.~~

~~This bill would, instead, exempt those facilities occupied by elderly or disabled persons from these provisions, and would also exempt facilities that are initially approved and operated under a regulatory agreement pursuant to provisions of the federal Tax Reform Act of 1986 and the federal Housing and Community Development Act of 1974.~~

~~Existing law provides for the regulation by the State Department of Social Services of activities relating to continuing care contracts that govern care provided to an elderly resident in a continuing care retirement community for the duration of the resident's life or a term in excess of one year.~~

~~Existing law requires a continuing care contract to contain specified elements, including requirements for procedures and conditions under which a resident of a continuing care retirement community may be transferred, taking into account the appropriateness and necessity of the transfer and the goal of promoting resident independence.~~

~~This bill would recast those requirements and conditions to specify that a resident of a continuing care retirement community may be involuntarily transferred only under specified conditions, after taking into account the appropriateness and necessity of the transfer, and the goals of promoting resident independence and the least restrictive~~

~~alternative placement options, and would grant additional rights and impose responsibilities, including notice and appeal procedures applicable to these transfer provisions.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~yes~~
no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 1091 of the Government Code is amended*
2 *to read:*

3 1091. (a) An officer shall not be deemed to be interested in a
4 contract entered into by a body or board of which the officer is a
5 member within the meaning of this article if the officer has only
6 a remote interest in the contract and if the fact of that interest is
7 disclosed to the body or board of which the officer is a member
8 and noted in its official records, and thereafter the body or board
9 authorizes, approves, or ratifies the contract in good faith by a vote
10 of its membership sufficient for the purpose without counting the
11 vote or votes of the officer or member with the remote interest.

12 (b) As used in this article, “remote interest” means any of the
13 following:

14 (1) That of an officer or employee of a nonprofit entity exempt
15 from taxation pursuant to Section 501(c)(3) of the Internal Revenue
16 Code (26 U.S.C. Sec. 501(c)(3)) or a nonprofit corporation, except
17 as provided in paragraph (8) of subdivision (a) of Section 1091.5.

18 (2) That of an employee or agent of the contracting party, if the
19 contracting party has 10 or more other employees and if the officer
20 was an employee or agent of that contracting party for at least three
21 years prior to the officer initially accepting his or her office and
22 the officer owns less than 3 percent of the shares of stock of the
23 contracting party; and the employee or agent is not an officer or
24 director of the contracting party and did not directly participate in
25 formulating the bid of the contracting party.

26 For purposes of this paragraph, time of employment with the
27 contracting party by the officer shall be counted in computing the
28 three-year period specified in this paragraph even though the
29 contracting party has been converted from one form of business
30 organization to a different form of business organization within
31 three years of the initial taking of office by the officer. Time of
32 employment in that case shall be counted only if, after the transfer

1 or change in organization, the real or ultimate ownership of the
2 contracting party is the same or substantially similar to that which
3 existed before the transfer or change in organization. For purposes
4 of this paragraph, stockholders, bondholders, partners, or other
5 persons holding an interest in the contracting party are regarded
6 as having the “real or ultimate ownership” of the contracting party.

7 (3) That of an employee or agent of the contracting party, if all
8 of the following conditions are met:

9 (A) The agency of which the person is an officer is a local public
10 agency located in a county with a population of less than 4,000,000.

11 (B) The contract is competitively bid and is not for personal
12 services.

13 (C) The employee or agent is not in a primary management
14 capacity with the contracting party, is not an officer or director of
15 the contracting party, and holds no ownership interest in the
16 contracting party.

17 (D) The contracting party has 10 or more other employees.

18 (E) The employee or agent did not directly participate in
19 formulating the bid of the contracting party.

20 (F) The contracting party is the lowest responsible bidder.

21 (4) That of a parent in the earnings of his or her minor child for
22 personal services.

23 (5) That of a landlord or tenant of the contracting party.

24 (6) That of an attorney of the contracting party or that of an
25 owner, officer, employee, or agent of a firm that renders, or has
26 rendered, service to the contracting party in the capacity of
27 stockbroker, insurance agent, insurance broker, real estate agent,
28 or real estate broker, if these individuals have not received and
29 will not receive remuneration, consideration, or a commission as
30 a result of the contract and if these individuals have an ownership
31 interest of 10 percent or more in the law practice or firm, stock
32 brokerage firm, insurance firm, or real estate firm.

33 (7) That of a member of a nonprofit corporation formed under
34 the Food and Agricultural Code or a nonprofit corporation formed
35 under the Corporations Code for the sole purpose of engaging in
36 the merchandising of agricultural products or the supplying of
37 water.

38 (8) That of a supplier of goods or services when those goods or
39 services have been supplied to the contracting party by the officer

1 for at least five years prior to his or her election or appointment
2 to office.

3 (9) That of a person subject to the provisions of Section 1090
4 in any contract or agreement entered into pursuant to the provisions
5 of the California Land Conservation Act of 1965.

6 (10) Except as provided in subdivision (b) of Section 1091.5,
7 that of a director of or a person having an ownership interest of
8 10 percent or more in a bank, bank holding company, or savings
9 and loan association with which a party to the contract has a
10 relationship of borrower or depositor, debtor or creditor.

11 (11) That of an engineer, geologist, or architect employed by a
12 consulting engineering or architectural firm. This paragraph applies
13 only to an employee of a consulting firm who does not serve in a
14 primary management capacity, and does not apply to an officer or
15 director of a consulting firm.

16 (12) That of an elected officer otherwise subject to Section 1090,
17 in any housing assistance payment contract entered into pursuant
18 to Section 8 of the United States Housing Act of 1937 (42 U.S.C.
19 Sec. 1437f) as amended, provided that the housing assistance
20 payment contract was in existence before Section 1090 became
21 applicable to the officer and will be renewed or extended only as
22 to the existing tenant, or, in a jurisdiction in which the rental
23 vacancy rate is less than 5 percent, as to new tenants in a unit
24 previously under a Section 8 contract. This section applies to any
25 person who became a public official on or after November 1, 1986.

26 (13) That of a person receiving salary, per diem, or
27 reimbursement for expenses from a government entity.

28 (14) That of a person owning less than 3 percent of the shares
29 of a contracting party that is a for-profit corporation, provided that
30 the ownership of the shares derived from the person's employment
31 with that corporation.

32 (15) *That of an employee or agent of the contracting party, if*
33 *all of the following conditions are met:*

34 (A) *The contract is between a local government body or board*
35 *and the contracting party as a franchise agreement.*

36 (B) *The employee or agent is not an officer or director of the*
37 *contracting party.*

38 (C) *The employee or agent did not participate directly or*
39 *indirectly in any manner in formulating the contract.*

40 (D) *The contracting party has more than 10 employees.*

1 (c) This section is not applicable to any officer interested in a
2 contract who influences or attempts to influence another member
3 of the body or board of which he or she is a member to enter into
4 the contract.

5 (d) The willful failure of an officer to disclose the fact of his or
6 her interest in a contract pursuant to this section is punishable as
7 provided in Section 1097. That violation does not void the contract
8 unless the contracting party had knowledge of the fact of the remote
9 interest of the officer at the time the contract was executed.

10 *SEC. 2. This act is an urgency statute necessary for the*
11 *immediate preservation of the public peace, health, or safety within*
12 *the meaning of Article IV of the Constitution and shall go into*
13 *immediate effect. The facts constituting the necessity are:*

14 *In order to ensure that a local government body or board with*
15 *a member with a specified interest may enter into a valid franchise*
16 *agreement prior to January 1, 2008, it is necessary that this act*
17 *take effect immediately.*

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20 **All matter omitted in this version of the bill**
21 **appears in the bill as amended in the**
22 **Senate, August 1, 2007 (JR11)**
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